

Report of the

**EXPERT CONSULTATION TO DRAFT A LEGALLY-BINDING
INSTRUMENT ON PORT STATE MEASURES**

Washington D.C., United States of America, 4–8 September 2007



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PREPARATION OF THIS DOCUMENT

This is the final version of the report of the Expert Consultation to Draft a Legally-binding Instrument on Port State Measures held in Washington D.C., United States of America, from 4 to 8 September 2007.

FAO.

Report of the Expert Consultation to Draft a Legally-binding Instrument on Port State Measures. Washington D.C., United States of America, 4–8 September 2007.

FAO Fisheries Report. No. 846. Rome, FAO. 2007. 22p.

ABSTRACT

This document contains the report of the Expert Consultation to Draft a Legally-binding Instrument on Port State Measures that was held in Washington D.C., United States of America, from 4 to 8 September 2007. Taking account of paragraph 68 of the report of the twenty-seventh session of the FAO Committee on Fisheries (Rome, Italy, 5–9 March 2007), the purpose of the Consultation was to prepare a draft text of a legally-binding instrument on port State measures, based on the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing. The Expert Consultation based its work on a preliminary draft of an agreement on port State measures prepared by FAO. On the basis of this initial draft, the Expert Consultation elaborated a draft agreement on port State measures to prevent, deter and eliminate illegal, unreported and unregulated fishing that will be submitted for consideration and review by the Technical Consultation on Port State Measures to be held in June 2008. However, because of time constraints, the Expert Consultation was unable to review the Preamble, Final Clauses and Annexes of the draft Agreement. The Expert Consultation was hosted by the Government of the United States of America and funded by the FAO Regular Programme, the Government of Norway and the Nordic Council of Ministers through Trust Fund project GCP/INT/032/NOR.

Distribution:

Participants in the session
Other interested nations and international
organizations
FAO Fisheries and Aquaculture Department

This One



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OPENING OF THE SESSION

1. The Director-General of the Food and Agriculture Organization of the United Nations (FAO), Mr Jacques Diouf, convened an Expert Consultation to Draft a Legally-binding Instrument on Port State Measures. The Consultation was held in Washington, D.C., United States of America, from 4 to 8 September 2007.

2. The Consultation was attended by 10 Experts in their personal capacities and five Resource Persons. A list of the Experts and Resource Persons is attached as Appendix B. The documents placed before the Consultation are listed in Appendix C. It was funded by the FAO Regular Programme, the Government of Norway and the Nordic Council of Ministers and hosted by the Government of the United States of America.

3. The Technical Secretary, Mr David Doulman, called the Expert Consultation to order. He invited Mr Jean-François Pulvenis de Séligny, Director, Fisheries and Aquaculture Economics and Policy Division, FAO, Rome, to make an Opening Statement on behalf of Mr Ichiro Nomura, Assistant Director-General for the Fisheries and Aquaculture Department. Mr Pulvenis de Séligny welcomed participants to the Expert Consultation, noting that each Expert was participating in his or her personal capacity. Recalling the decision of the twenty-seventh session of the FAO Committee on Fisheries that met in March 2007, he pointed out that participants would review systematically and methodically the structure, form and contents of a draft legally-binding instrument on port State measures that would be submitted in June 2008 to an FAO Technical Consultation. The outcome of that Consultation would be forwarded to the twenty-eighth session of COFI in 2009 for its consideration. Mr Nomura's Statement is attached as Appendix D.

ELECTION OF CHAIRPERSON

4. Ambassador David Balton, Deputy Assistant Secretary for Oceans and Fisheries, Bureau of Oceans and International Environmental and Scientific Affairs, US Department of State, Washington D.C., was elected Chairperson. He expressed his gratitude to the Experts for their confidence in electing him to the Chair and welcomed them to Washington D.C.. He outlined arrangements for the Consultation noting that its role was to provide advice to FAO on the elaboration of a draft legally-binding instrument on port State measures that would be used as the basic document for negotiations at the FAO Technical Consultation to be held in June 2008.

ADOPTION OF THE AGENDA AND ARRANGEMENTS FOR THE SESSION

5. The Consultation adopted the Agenda attached as Appendix A. The Chairperson then outlined the timetable of work for the Consultation.

CONSIDERATION OF A PRELIMINARY DRAFT TEXT FOR A LEGALLY-BINDING INSTRUMENT ON PORT STATE MEASURES BASED ON THE 2001 FAO INTERNATIONAL PLAN OF ACTION TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING AND THE 2005 FAO MODEL SCHEME ON PORT STATE MEASURES TO COMBAT ILLEGAL, UNREPORTED AND UNREGULATED FISHING

6. The Chairperson invited Ms Judith Swan, FAO Consultant, Rome, to introduce the FAO Agreement on Port State Measures: Preliminary Working Draft (July 2007). She commenced by providing background information on the movement towards the development of a legally-binding instrument on port State measures, pointing out that the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) and the 2005 FAO Model Scheme had triggered a deepened international focus on the value and importance of port State measures to combat IUU fishing. Ms Swan then discussed the challenges countries were facing in attempting to address IUU fishing, the approach and methodology adopted in elaborating the draft legally-binding instrument and provided an explanation of its provisions.

7. Following the presentation, the Expert Consultation addressed the preliminary working draft of a legally-binding instrument in a systematic and comprehensive manner. The Consultation also considered other relevant drafting suggestions put forward by the Experts, Resource Persons and FAO staff.

8. Owing to time constraints, the Expert Consultation was not in a position to review the Preamble, Final Clauses and Annexes of the draft Agreement. The Experts recommended that prior to the Technical Consultation in June 2008, FAO take steps to review the Annexes and present them to that meeting in a revised format.

9. The draft Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing elaborated by the Expert Consultation is attached as Appendix E.

ANY OTHER MATTERS

10. There were no other matters.

ADOPTION OF THE REPORT

11. The report of the Expert Consultation was adopted by the Consultation on Saturday 8 September 2007 at 13.30 hours.

AGENDA

1. Opening of the session
2. Election of Chairperson
3. Adoption of the agenda and arrangements for the session
4. Consideration of a preliminary draft text for a legally-binding instrument on port State measures based on the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing
5. Any other matters
6. Adoption of the report

APPENDIX B

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APPENDIX C**DOCUMENTS**

Agenda

2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing

FAO Agreement on Port State Measures: Preliminary Working Draft (July 2007)

List of documents

List of experts and resource persons

OPENING STATEMENT
by
Ichiro Nomura
Assistant Director-General
Fisheries and Aquaculture Department
FAO
Rome, Italy

Distinguished Experts, Resource Persons and colleagues:

On behalf of the Director-General of FAO, Mr Jacques Diouf, it gives me much pleasure to welcome you to this Expert Consultation to Draft a Legally-binding Instrument on Port State Measures with a view to intensifying efforts to combat illegal, unreported and unregulated (IUU) fishing.

I have followed closely the preparations for the meeting and I am delighted that FAO has been able to assemble such an impressive group of Experts and Resource Persons. As you know each Expert here today, in his or her personal capacity, has been chosen because of the unique professional and geographical experience he or she would bring to the Consultation.

Turning immediately to the issues of substance before the Expert Consultation, we are all aware that IUU fishing has major consequences for the conservation and management of capture fisheries and until and unless we are able to neutralize the impacts of IUU fishing we will not be in a position to ensure that fisheries are exploited in a responsible and long-term sustainable manner.

It is primarily for this reason that the international community has resolved to address IUU fishing as comprehensively as possible and in a front-on manner, viewing it as environmental crime and not simply as an administrative offence.

It was against this backdrop that the FAO Committee on Fisheries (COFI) during its twenty-seventh session in March 2007 acknowledged the need for a comprehensive suite of port State measures, including the possibility of developing a new legally-binding instrument based on the 2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing and the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU).

During the discussions, many Members of the Committee recognized that this new instrument would represent minimum standards for port States with flexibility to adopt more stringent measures. COFI agreed upon a timetable structured in two phases: first, the convening of this Expert Consultation and, second, the holding of a Technical Consultation during the first half of 2008, at FAO headquarters in Rome, Italy, open to all FAO members.

The main objective of this Expert Consultation that is starting today is to elaborate a draft of the new legally-binding instrument as called for by COFI. To facilitate this task, the Secretariat has prepared a first draft, as a starting point and as a basis for discussion. The draft text that will emerge from the work done during this week will be submitted to the Technical Consultation that will be held in June 2008. The outcome of the Technical Consultation will, in turn, be submitted to the 2009 session of COFI for review and consideration.

Regarding the work to be done this week, it is expected that participants in this consultation will review systematically and methodically the structure, form and contents of the draft instrument.

I would urge that, in this endeavour, every effort be made to ensure that the draft instrument is not overly complex and that it is practical to implement.

We must not forget that the people who will have to comply with the requirements contained in the instrument and those who will be charged with implementing it will not be lawyers and barristers of the court.

We recognize that the time that you have available to do the job is very short. However, I have worked with many of you and I know that you are accustomed to working to tight deadlines. I am therefore confident that it should be possible to achieve the goal that has been set for the Expert Consultation.

I also wish to recall briefly that, in keeping with FAO practice for an Expert Consultation of this nature, the report of the meeting will be essentially an administrative one with the text of the draft legally-binding instrument attached.

Last but not least, I would like to acknowledge the financial support provided by the Government of Norway for this meeting and, at the same time, thank the Government of the United States of America for its willingness to host the Consultation.

I wish you well for a fruitful and successful meeting.

Thank you very much.

APPENDIX E

**DRAFT AGREEMENT ON PORT STATE MEASURES
TO PREVENT, DETER AND ELIMINATE
ILLEGAL, UNREPORTED AND UNREGULATED FISHING**

PREAMBLE¹

The Parties to this Agreement:

.....

Have agreed as follows:

¹ See paragraph 8 of the report.

PART I

GENERAL PROVISIONS

Article 1 *Use of terms*

1. For the purposes of this Agreement:

- (a) "arrangement" means a cooperative mechanism established in accordance with the Convention and the UN Fish Stocks Agreement by two or more States for the purpose, *inter alia*, of establishing conservation and management measures in a subregion or region for one or more fish stocks;
- (b) "conservation and management measures" means measures to conserve and manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law as reflected in the Convention;
- (c) "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982;
- (d) "FAO Compliance Agreement" means the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of November 1993;
- (e) "fish" means all species of living marine resources, whether processed or not;
- (f) "fishing" means:
 - (i) the actual or attempted searching for, catching, taking or harvesting of fish; and
 - (ii) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish.
- (g) "fishing related activities" means any operation in support of, or in preparation for, fishing, including the processing, transshipment or transport of fish that have not been previously landed and offloaded at a port, as well as the provision of personnel, fuel, gear and other supplies at sea;
- (h) "illegal, unreported and unregulated fishing" has the same meaning as set out in the paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and applies to all marine fisheries;
- (i) "Party" means a State or regional economic integration organization that has consented to be bound by this Agreement and for which this Agreement is in force;

- (j) "port" includes offshore terminals and other installations for landing, transshipping, processing, refuelling or resupplying;
- (k) "port State measures" means measures set forth in this Agreement to be taken by a port State;
- (l) "regional economic integration organization" means a regional economic integration organization to which its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;
- (m) "regional fisheries management organization" means an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures; and
- (n) "UN Fish Stocks Agreement" means the Agreement of 4 December 1995 for the Implementation of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.
- (o) "vessel" means any vessel, ship of another type, boat and other craft used for, equipped to be used for, or intended to be used for, fishing or fishing related activities;

Article 2

Objective

The objective of this Agreement is to ensure the long-term conservation and sustainable use of living marine resources through strengthened and harmonized port State measures to prevent, deter and eliminate illegal, unreported and unregulated fishing.

Article 3

Application

1. Except as provided in paragraph 2 of this Article, each Party shall, in its capacity as a port State, apply this Agreement in respect of vessels that are not flying its flag that are seeking access to its port(s) or are in one of its ports.
2. Each Party shall take all necessary measures to ensure effective jurisdiction and control over the fishing and fishing related activities of vessels flying its flag. To the greatest extent possible, such measures shall include *mutatis mutandis* the port State measures set forth in this Agreement in respect of such vessels.
3. This Agreement shall be applied and implemented in a fair, transparent and non-discriminatory manner, consistent with international law.

Article 4

Relationship with international law and other international instruments

1. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of Parties under international law, including but not limited to the Convention and other relevant international instruments. In particular,

- (a) nothing in this Agreement affects the exercise by States of their sovereignty over ports in their territory in accordance with international law, which includes the right of States to regulate access to their territory, including their ports, as well as to adopt more stringent port State measures consistent with international law;
- (b) nothing in this Agreement affects the competence of regional fisheries management organizations to adopt more stringent port State measures consistent with international law.

2. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention and other relevant international instruments.

Article 5

Integration and coordination

To the greatest extent possible, Parties shall:

- (a) integrate port State measures into a broader system of port State controls;
- (b) integrate port State measures with other measures to prevent, deter and eliminate illegal, unreported and unregulated fishing; and
- (c) take measures to share information among relevant national agencies and to coordinate the activities of such agencies in the implementation of this Agreement.

Article 6

Cooperation and exchange of information

1. In the implementation of this Agreement and with due regard to appropriate confidentiality requirements, Parties shall cooperate and exchange information with relevant States, regional fisheries management organizations, international organizations and other entities, including, as appropriate, by:

- (a) requesting information from, and providing information to, relevant databases;
- (b) providing information on the implementation of this Agreement; and
- (c) requesting and providing cooperation to promote the effective implementation of this Agreement.

2. Parties shall cooperate, at the subregional and regional levels, in the effective and harmonized implementation of this Agreement through regional fisheries management organizations or otherwise.

PART 2

REQUIREMENTS PRIOR TO ENTRY INTO PORT

Article 7

Designation of ports

1. Each Party shall designate and publicize ports to which vessels may be permitted access.
2. Each Party shall, to the greatest extent possible, ensure that every port designated and publicized in accordance with paragraph 1 has sufficient capacity to conduct inspections and take other measures in accordance with this Agreement.

Article 8

Advance notification

1. Each Party shall, before granting access to a vessel to its port require the vessel to provide advance notification that includes, as a minimum standard, the information set out in Annex A.
2. Each Party shall require the information referred to in paragraph 1 of this Article to be provided sufficiently in advance to allow adequate time for the port State to investigate the required information.

PART 3

USE OF PORTS

Article 9

Denial of use of port

1. A Party shall not allow a vessel to use its ports for landing, transshipping or processing of fish if the vessel:
 - (a) at the relevant time was engaged in fishing in an area and for fish under the competence of a regional fisheries management organization and was not flying the flag of a State that is a member or cooperating non-member of that organization; or
 - (b) has been sighted as being engaged in, or supporting, illegal, unreported and unregulated fishing in the area of competence of a relevant regional fisheries management organization or in areas under the national jurisdiction of a relevant coastal State,

unless the vessel can establish that the catch was taken in a manner consistent with relevant conservation and management measures.

2. A Party shall not allow a vessel to use its ports for landing, transshipping or processing of fish if the vessel is included in a list of vessels having engaged in, or supported, illegal, unreported and unregulated fishing adopted by a regional fisheries management organization in accordance with the rules and procedures of such organization.

3. A Party shall not allow a vessel to use its ports for landing, transshipping or processing of fish where there are reasonable grounds for believing that the vessel does not have a valid and applicable authorization to engage in fishing and fishing related activities required by a relevant regional fisheries management organization for its area of competence or by a coastal State for areas under its national jurisdiction.

4. A Party shall, in appropriate situations, deny a vessel referred to in paragraphs 1, 2 or 3 of this Article, access to port services, including, *inter alia*, refuelling and resupplying but not including services essential to the safety, health and welfare of the crew.

5. Where a Party has denied the use of its ports in accordance with this Article, it shall promptly notify the flag State and, as appropriate, relevant coastal State(s), regional fisheries management organization(s) and other relevant organizations of such action.

Article 10

Withdrawal of denial of use of port

1. A Party may withdraw its denial of the use of its port in respect of a vessel only if the Party is satisfied that there is sufficient proof to show that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply.

2. Where a Party has withdrawn its denial pursuant to paragraph 1 of this Article, it shall promptly notify those to whom a notification was issued pursuant to this Agreement.

PART 4

INSPECTIONS AND FOLLOW-UP ACTIONS

Article 11

Levels and priorities for inspection

1. Each Party shall endeavour to inspect a number of vessels in its ports required to reach an annual level of inspections necessary to achieve the objective of this Agreement.

2. In determining which vessels to inspect, a Party shall give priority to:

- (a) vessels that have been denied the use of a port in accordance with Articles 9 or 17 of this Agreement; and
- (b) requests from other relevant States or regional fisheries management organizations that particular vessels be inspected.

3. Parties shall seek to agree, through regional fisheries management organizations or otherwise, on minimum levels for inspections of vessels, with a view to reaching a coordinated level of inspections necessary to achieve the objective of this Agreement.

Article 12
Conduct of inspections

1. Each Party shall ensure that the inspection procedures in Annex B are implemented as a minimum standard.
2. Each Party shall, in carrying out inspections in its ports:
 - (a) ensure that inspections are carried out by properly qualified persons authorized for that purpose, having regard in particular to Article 16 of this Agreement;
 - (b) ensure that, prior to an inspection, inspectors are required to present to the master of the vessel an appropriate document identifying the inspectors as such;
 - (c) ensure that the inspector examines all areas of the vessel that are required, fish on board, the nets and any other gear, equipment, and any document or record which the inspector deems necessary to verify compliance with relevant conservation and management measures;
 - (d) ensure that the master of the vessel is required to give the inspector all necessary assistance and information, and to present relevant material and documents as may be required, or certified copies thereof;
 - (e) subject to appropriate arrangements with the flag State of the vessel, invite the flag State to participate in the inspection;
 - (f) make all possible efforts to avoid unduly delaying the vessel and ensure that the vessel suffers the minimum interference and inconvenience and that unnecessary degradation of the quality of the fish is avoided;
 - (g) ensure that an inspector is able to communicate with the master or senior crew members of the vessel, or that the inspector is accompanied, where possible and where needed, by an interpreter;
 - (h) ensure that inspections are not conducted in a manner that would constitute harassment of any vessel; and
 - (i) ensure that the result of an inspection is presented to the master of the vessel for review and signature, and that the report is completed and signed by the inspector. The master shall be given the opportunity to add any comment to the report and, as appropriate, to contact the relevant authorities of the flag State, in particular when the master has serious difficulties in understanding the contents of the report. A copy of the report shall be provided to the master for retention on board the vessel.

Article 13
Results of inspections

Each Party shall, as a minimum standard, require the information set out in Annex C to be included in the report of the results of each inspection.

Article 14
Transmittal of results by Party

Each Party shall take measures to transmit the results of each inspection to the flag State of the inspected vessel and, as appropriate, to:

- (a) other relevant States;
- (b) relevant regional fisheries management organizations; and
- (c) FAO and other relevant international organizations.

Article 15
Electronic exchange of information

1. To facilitate implementation of this Part of the Agreement, each Party shall, where possible, establish a communication mechanism that allows for direct electronic exchange of messages between relevant States, entities and institutions, with due regard to appropriate confidentiality requirements.

2. Each Party shall handle information to be transmitted through any mechanism established under paragraph 1 in a standardized form consistent with Annex D.

Article 16
Training of inspectors

Each Party shall ensure that requirements are established for the certification of its inspectors. Such requirements shall take into account the guidelines for the training of inspectors in Annex E.

Article 17
Port State actions following inspection

1. When, following an inspection, there is reasonable evidence for believing that a vessel has engaged in, or supported, illegal, unreported and unregulated fishing which can include, but is not limited to, the following:

- (a) fishing without a valid licence, authorization or permit issued by the flag State or the relevant coastal State;
- (b) serious failure to maintain accurate records of catch and catch-related data;
- (c) serious misreporting of catch;
- (d) significant fishing in a closed area, during a closed season or contrary to applicable effort or quota requirements;
- (e) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;

- (f) using fishing gear that is significantly inconsistent with authorized gear;
- (g) falsifying or concealing the markings, identity or registration of the vessel;
- (h) concealing, tampering with or disposing of evidence relating to an investigation;
- (i) serious failure to comply with requirements for vessel monitoring systems (hereafter VMS);
- (j) taking or landing significant amounts of undersized fish in contravention of relevant conservation and management measures; or
- (k) committing multiple violations which together constitute a serious disregard of relevant conservation and management measures;

the Party shall promptly notify the flag State of the vessel and, as appropriate, other relevant States and regional fisheries management organizations and other relevant organizations and shall deny use of its port to the vessel for landing, transshipping or processing of fish, if these measures have not already been taken in respect of the vessel.

2. A Party shall, in appropriate situations, deny a vessel referred to in paragraph 1 of this Article, access to port services, including, *inter alia*, refuelling and resupplying but not including services essential to the safety, health and welfare of the crew.

3. A Party may take measures in addition to those specified in paragraphs 1 and 2 of this Article that are consistent with international law where there is evidence that a vessel has engaged in one or more of the activities set forth in paragraph 1, provided that:

- (a) the measures are provided for in its national laws and regulations;
- (b) the flag State of the vessel has consented to the taking of such measures or requested such measures to be taken, or a relevant coastal State has requested the taking of such measures in respect of a violation that has occurred in an area under its national jurisdiction;
- (c) the vessel is without nationality; or
- (d) the additional measures gives effect to a decision of a regional fisheries management organization or is taken pursuant to other international agreements.

Article 18

Appeals concerning actions by the port State

A Party shall ensure that the owner, operator or representative of a vessel that has been the subject of port State measures taken pursuant to Articles 9 and 17 of this Agreement may appeal the decision. An appeal will not cause such measures to be suspended while the appeal is pending. The master of the vessel shall be informed of the right of appeal.

Article 19
Compensation

Each Party shall ensure that the owner or operator of a vessel is entitled to compensation for any loss or damage suffered as a consequence of undue delay. In any instance of alleged delay, the burden of proof lies with the owner or operator of the vessel

Article 20
Force majeure or distress

Nothing in this Agreement affects the access of vessels to port in accordance with international law for reasons of force majeure or distress.

PART 5
ROLE OF FLAG STATES

Article 21
Role of flag States

1. Each Party shall, in its capacity as a flag State, cooperate with port States and relevant coastal States, regional fisheries management organizations and other international organizations in the implementation of this Agreement.
2. When a Party has reasonable grounds to believe that a vessel flying its flag has engaged in or supported illegal, unreported and unregulated fishing and is seeking access to or is in the port of another State, it shall, as appropriate, request that State to inspect the vessel or to take other measures consistent with this Agreement.
3. Each Party shall ensure that vessels entitled to fly its flag land, transship and process fish, and use other port services, in ports of States that are acting in accordance with, or in a manner consistent, with this Agreement. Parties are encouraged to develop, through regional fisheries management organizations, fair, transparent and non-discriminatory procedures for identifying States that are not acting in accordance with, or in a manner consistent with, this Agreement.
4. Each Party shall, in its capacity as a flag State, report to relevant port States and, as appropriate, other relevant States, regional fisheries management organizations and FAO on actions they have taken in respect of vessels flying their flags that, as a result of port State measures taken under this Agreement, have been determined to have engaged in, or supported, illegal, unreported and unregulated fishing.

PART 6
REQUIREMENTS OF DEVELOPING STATES

Article 22
Requirements of developing States

1. Each Party shall give full recognition to the special requirements of developing States in relation to the implementation of port State measures. To this end, Parties shall, either directly or through FAO and other specialized agencies of the United Nations and other appropriate international and regional organizations and bodies including regional fisheries management organizations, provide assistance to developing States in order to:

- (a) enhance the ability of developing States, in particular the least-developed among them and small island developing States, to develop a legal basis and human capacity for the implementation of effective port State measures;
- (b) facilitate the participation of developing States in any subregional, regional and international organizations that promote the effective development and implementation of port State measures; and
- (c) facilitate technical assistance to strengthen the implementation of port State measures by developing States, in coordination with relevant regional and international measures and mechanisms.

2. In implementing this Agreement, Parties shall give due regard to the need to ensure that a disproportionate burden is not transferred directly or indirectly onto developing port States.

3. Parties shall cooperate to establish special funds to assist developing States Parties in the implementation of this Agreement. These funds shall be directed specifically towards:

- (a) developing national, regional and international port State measures;
- (b) developing human capacity, including for fisheries managers, inspectors, monitoring, control and surveillance and legal personnel, including training and capacity-building at national and regional levels;
- (c) monitoring, control, surveillance and compliance activities relevant to port State measures; and
- (d) assisting developing States Parties to meet the costs involved in any proceedings for the settlement of disputes that results from action they have taken pursuant to this Agreement.

PART 7**DISPUTE SETTLEMENT***Article 23**Peaceful settlement of disputes*

1. Any Party may seek consultations with any other Party or Parties on any dispute with regard to the interpretation or application of the provisions of this Agreement with a view to reaching a mutually satisfactory solution as soon as possible.
2. In the event that the dispute is not resolved through these consultations within a reasonable period of time, the Parties in question shall consult among themselves as soon as possible with a view to having the dispute settled by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.
3. Any party to a dispute of this character not so resolved may refer the dispute for settlement to the International Court of Justice, to the International Tribunal for the Law of the Sea or to arbitration.

PART 8**NON-PARTIES***Article 24**Non-Parties to this Agreement*

1. Parties shall encourage non-Parties to this Agreement to become Parties thereto and to adopt laws and regulations consistent with its provisions.
2. Parties shall take fair, non-discriminatory and transparent measures consistent with this Agreement and international law to deter the activities of non-Parties which undermine the effective implementation of this Agreement.

PART 9*Article 25**Monitoring and review*

Parties shall, within the framework of FAO and its relevant Bodies, ensure the regular and systematic monitoring of the implementation of this Agreement and the assessment of the progress made towards achieving its objective.

PART 10
FINAL PROVISIONS²

ANNEXES³

² See paragraph 8 of the report.

³ See paragraph 8 of the report.

This document contains the report of the Expert Consultation to Draft a Legally-binding Instrument on Port State Measures that was held in Washington D.C., United States of America, from 4 to 8 September 2007. Taking account of paragraph 68 of the report of the twenty-seventh session of the FAO Committee on Fisheries (Rome, Italy, 5–9 March 2007), the purpose of the Consultation was to prepare a draft text of a legally-binding instrument on port State measures, based on the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing. The Expert Consultation based its work on a preliminary draft of an agreement on port State measures prepared by FAO. On the basis of this initial draft, the Expert Consultation elaborated a draft agreement on port State measures to prevent, deter and eliminate illegal, unreported and unregulated fishing that will be submitted for consideration and review by the Technical Consultation on Port State Measures to be held in June 2008. However, because of time constraints, the Expert Consultation was unable to review the Preamble, Final Clause and Annexes of the draft Agreement. The Expert Consultation was hosted by the Government of the United States of America and funded by the FAO Regular Programme, the Government of Norway and the Nordic Council of Ministers through Trust Fund project GCP/INT/032/NOR.

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